



Comments of the Center for Economic Justice to the

NAIC Big Data Working Group

Regarding the Working Group's Proposed Work Plan

May 4, 2016, 2016

The Center for Economic Justice offers the following comments on the April 15, 2016 Discussion Draft "Status Report and Next Steps."

Insurers' use of Big Data is a revolutionary change in insurer practices affecting all aspects of insurers' interaction with applicants, policyholders and claimants. This change – accessing huge amounts of insurance and non-insurance personal consumer information available for the first time combined with predictive modeling and analytics radically different from past actuarial and analytic practices – represents a challenge to the state-based regulatory consumer protection structure which was created in another age of data and analytics, which presumed regulators has complete oversight over the inputs into pricing and claims settlement analyses and which is simply not equipped to provide oversight and consumer protection in the Big Data Age.

The proposed next steps for the Working Group are timid and woefully inadequate. Regulators' failure to take meaningful action represents a decision to deregulate many insurer practices by default. Holding public hearings is a reasonable first step to gathering information necessary for the Working Group's deliberations, but such information gathering is not action or consumer protection. Stated differently, consumer organizations will hold the NAIC accountable for its action or inaction on Big Data issues. Congress, the Federal Insurance and consumer organizations will not accept public hearings and information gathering as substantive action to address the consumer protection issues raised by insurers' use of Big Data.

Industry's comment that Big Data needs to be defined is without merit. As CEJ has explained in numerous comments, insurers' use of Big Data refers to use of massive databases of personal consumer information with associated predictive modeling analytics. This definition is applicable for all aspects of insurer practice – pricing, marketing, payment plan eligibility and claims settlement. The industry comments are red herrings designed to lead regulators down a path of inactivity.

We offer the following comments on the proposed work plan, presented as redlines to the April 15, 2016 Discussion Draft.

1. Discuss insurers' use of big data in marketing, pricing and payment plan eligibility, rating and underwriting
 - The Working Group will examine the role of Big Data in marketing and sales with particular emphasis on the presentation or absence of options to consumers in online shopping and purchases.
 - The Working Group will examine insurers' use of Big Data for pricing, including underwriting, tier placement and rating, to determine if such practices comply with existing laws and regulations, are contrary to public policy, and if changes to statutes and regulations or regulatory practices are needed to promote transparency, consumer protection and competition. ~~needs to review insurers' use of big data in rating and underwriting to better understand how existing laws and regulations apply.~~
 - The Working Group will develop proposals for best practices to create focus on transparency for both regulators and consumers on insurers' use of Big Data in pricing rate development and risk classification segmentation.
 - The Working Group will develop a proposal for periodic collection of information from insurers regarding the types of personal consumer information and other Big Data collected or used by insurers, the sources of these data and the uses of these data. The Working Group will also develop a proposal for publishing the results of this data collection to create transparency for consumers without violating states' trade secret protections. ~~Regulators need to be better positioned to explain to consumers what data insurers are using and how the data is being used.~~
 - The working group will explore possible regulatory initiatives regarding Big Data to promote beneficial competition, including, for example, promotion of an all-industry telematics database to allow small- and medium-sized insurers to access telematics data and portability of consumer telematics data across insurers.

2. Discuss insurers' use of big data in claims settlement

- The Working Group will examine insurers' use of Big Data for claim settlement, including predictive models for detecting fraudulent claims, high-severity claims and differential claim settlement practices based on consumer characteristics. The Working Group will determine if such practices comply with existing laws and regulations, are contrary to public policy, and if changes to statutes and regulations or regulatory practices are needed to promote transparency, consumer protection and competition..
- The Working Group will develop proposals for best practices to create transparency for both regulators and consumers on insurers' use of Big Data in claims settlement.
- The Working Group will develop a proposal for periodic collection of information from insurers regarding the types of personal consumer information and other Big Data collected or used by insurers, the sources of these data and the uses of these data. The Working Group will also develop a proposal for publishing the results of this data collection to create transparency for consumers without violating states' trade secret protections. The Working Group needs to review insurers' use of big data in the claims settlement process to better understand how existing laws and regulations apply.

3. Discuss regulators' use of big data

- The Working Group will identify what data states currently have and how it is being used.
- The Working Group will identify any discuss potential opportunities for better gaps in the use of currently available data.
- The Working Group will identify discuss potential gaps in data needs opportunities for more granular data collection of market outcomes to facilitate regulatory Big Data applications.

~~4. Insurers' use of big data for marketing~~

- ~~The Working Group recognizes this issue is part of the charge but is deferring future discussion on this issue since the first three issues have the biggest impact on marketplace innovations and consumer protection.~~

Discussion

The examination of Big Data marketing issues should be part of the examination of pricing issues because the two are intimately related. The same types of segmentation tools used for pricing are used for marketing and marketing represents the gateway and available options for coverage and price for many applicants. The unfair practices associated with price comparison sites and lead aggregators have been well documented. The Financial Conduct Authority in the United Kingdom performed research into price comparison websites and found:

The Financial Conduct Authority (FCA) has found that some price comparison websites operating in the general insurance sector are failing to meet consumers' expectations of them and, in some cases, the FCA's regulatory standards.

In a thematic review published today, the FCA found that the websites did not always ensure that consumers were given the appropriate information to help them make informed decisions. This is particularly important as FCA is concerned that consumers' focus on headline price and brand when using PCWs could distract from crucial product features such as policy coverage and terms.

By failing to provide clear information, the websites are increasing the risk that consumers may buy products without understanding key features such as level of cover or excess levels and purely focus on the price. While a few websites did provide this information clearly the level of clarity varied significantly depending on the provider. Clive Adamson, FCA director of supervision said:

The other key findings of the FCA's review were:

- Price comparison websites did not make clear their role in the distribution of the product or the nature of service they provided. For example, some consumers mistakenly believe that the price comparison website had provided them with quotes on the best policy for their individual needs and had assessed the suitability of the policy for them.
- Not all comparison sites, that were part of a larger group of an insurer or broker, disclose this potential conflict of interest, which is against FCA rules. However, the FCA found no evidence that these firms used this relationship to their commercial advantage.¹

¹ <https://www.fca.org.uk/news/price-comparison-websites-failing-to-meet-fca-expectations>

The White House and Federal Trade Commission Reports on Big Data emphasize the potential for Big Data marketing applications to reflect and perpetuate historical discrimination. Our prior comments to the Working Group included presentations by other consumer groups on lead generation websites, their conflict of interest and channeling of consumers into Big Data-defined options. A growing body of academic work discusses the disparate impact of Big Data. For example, Solon Barocas and Andrew Selbst write:

Big data claims to be neutral. It isn't.

Advocates of algorithmic techniques like data mining argue that they eliminate human biases from the decision-making process. But an algorithm is only as good as the data it works with. Data mining can inherit the prejudices of prior decision-makers or reflect the widespread biases that persist in society at large. Often, the “patterns” it discovers are simply preexisting societal patterns of inequality and exclusion. Unthinking reliance on data mining can deny members of vulnerable groups full participation in society. Worse still, because the resulting discrimination is almost always an unintentional emergent property of the algorithm's use rather than a conscious choice by its programmers, it can be unusually hard to identify the source of the problem or to explain it to a court.²

The Working Group must examine Big Data marketing practices together with its examination of Big Data pricing practices because the two are intertwined. Exclusionary Big Data practices may not reveal themselves in pricing if those practices have been built into marketing such that insurers never need to deny coverage to certain groups of consumers because those consumers never had access to certain products, coverages or price levels to begin with.

The remainder of our suggested edits is intended replace vague statements with more specific activities which will empower Working Group members to make informed decisions on regulatory responses to Big Data.

Thank you for your consideration.

² http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477899